

[Waiver 1996-8]

**MEMORANDUM**

TO: Douglas M. Duncan  
County Executive

FROM: Laurie B. Horvitz, Chair [initialed]  
Montgomery County Ethics Commission

SUBJECT: Request for Advisory Opinion/Waiver

DATE: August 8, 1996

The Montgomery County Ethics Commission has reviewed a June 13, 1996 memorandum from Bruce Romer, Chief Administrative Officer, requesting an advisory opinion on your behalf.

In that memorandum, Mr. Romer described discussions between the Ethics Commission and County Attorney Thompson regarding your participation in matters relating to a proposed user tax for cellular phones. At the Commission's meeting on May 21, 1996, Mr. Thompson explained your desire to veto legislation proposing the user tax. The issue was presented to the Commission because you and certain family members own stock in various corporations which are involved in the telecommunications business. The stock holdings are modest in value but exceed the \$1,000 threshold imposed by the Ethics Law. See Section 19A-11(c). Mr. Thompson shared his opinion that Section 19A-11(b)(1) of the Ethics Law was applicable. That section authorizes participation by a public employee in certain circumstances where the employee would otherwise be disqualified because of a conflict of interest. The section permits participation "if the disqualified public employee is required by law to act or is the only person authorized to act . . ." Although the Commission did not issue a formal opinion, it expressed support for the County Attorney's interpretation of Section 19A-11(b)(1). The Commission's advice was rendered verbally because Mr. Thompson indicated that your actions were imminent.

According to Mr. Romer's memorandum, you are presently seeking an opinion and waiver, if necessary, to permit your participation in discussions and decisions affecting the telecommunications industry. Section 19A-11(a) governs your situation because the stocks that you and your family members own constitute an "economic interest" under the Ethics Law. Your participation in decisions regarding the telecommunications industry will affect your economic interests in a manner distinct from the effect on the public generally. See Section 19A-11(a)(1) of the Ethics Law. In more limited circumstances, you may also require a waiver of Section 19A-11(a)(2). For example, that section would apply when AT&T is a party to matters under consideration.

In a narrow set of circumstances, Section 19A-11(b)(1) would permit your participation without a waiver. As the County Executive, you may be the only person

authorized to act on certain matters. However, the Commission would need to examine each circumstance individually in order to determine the applicability of that section.

The Commission has decided to waive the provisions of Section 19A-11(a) so that you may participate in the formulation of policies that affect the telecommunications industry generally. The Ethics Law sets forth a three-part waiver standard. In order to grant a waiver, Section 19A-8(a) requires the Commission to find:

- (1) the best interests of the County would be served by granting the waiver;
- (2) the importance to the County of a public employee performing his or her official duties outweighs the actual or potential harm of any conflict of interest; and
- (3) granting the waiver will not give a public employee an unfair advantage over other members of the public.

Each of these criteria has been satisfied.

First, the best interests of the County clearly support the County Executive's participation in telecommunications matters. Your role in these matters is extremely important and cannot be duplicated by other public employees.

Second, the importance of your participation outweighs the actual or potential harm of any conflict of interest. Significantly, you have only asked to participate in matters that have an effect upon the telecommunications industry as a whole. Your request does not encompass circumstances where your participation would have a direct financial impact upon AT&T or Bell Atlantic. Because your involvement will be limited to matters that "tangentially affect individual companies," there is little potential harm of any conflict. If you wish to participate in matters directly affecting AT&T or Bell Atlantic, and not the telecommunications industry generally, you must obtain an additional waiver.

Third, granting the waiver will not give you an unfair advantage over other members of the public. Notably, AT&T and Bell Atlantic are large companies which do not generate most of their revenues within Montgomery County. As a consequence, the policies and practices of Montgomery County are not likely to impact the value of AT&T or Bell Atlantic stocks. Therefore, your participation in the County's telecommunications debate will not materially affect the value of your stock or provide you with an unfair advantage.

Based upon these conclusions, the Commission has granted you a waiver to participate in the formulation of the County's general telecommunications policies. In the future, please send your requests for advisory opinions and waivers directly to the Commission. Thank you for your sensitivity to these ethics concerns.

cc: Bruce Romer